

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

M,A, YAH,

Plaintiff,

v.

**DEAN MILLER, Officer, In His
Individual And Official Capacity,
OMAHA POLICE DEPARTMENT,
PERRY MITCHELL, Inspector, In His
Individual And Official Capacity, and
UNITED STATES POSTAL SERVICE,**

Defendants.

CASE NO. 8:07CV271

**MEMORANDUM
AND ORDER**

This matter is before the court on the plaintiff's Motion to Continue Partial Filing Fee. (Filing No. 9.) In his motion, M, A, Yah, a prisoner who is proceeding in forma pauperis ("IFP") in this action, states that he has insufficient funds in his prison trust account to pay the initial partial filing fee assessed in the court's August 7, 2007 Order. (Filing no. 7.) The plaintiff states that he has requested outside help for payment of the fee. Because of the plaintiff's showing of good cause, the plaintiff's case will proceed notwithstanding nonpayment of the initial partial filing fee by the original deadline.

28 U.S.C. § 1915(b)(4) states "[i]n no event shall a prisoner be prohibited from bringing a civil action ... for the reason that the prisoner has no assets and no means by which to pay the initial partial filing fee." When the prisoner is unable to pay the initial partial filing fee due to a lack of funds, the requirement that the initial partial filing fee will be paid at the outset of the case is suspended. *See Jackson v. N.P. Dodge Realty Co.*, 173 F. Supp. 2d 951, 957 n. 9 (D. Neb. 2001). Instead, "the whole of the ... filing fees are

to be collected and paid by the installment method contained in § 1915(b)(2).” *Henderson v. Norris*, 129 F.3d 481, 484 (8th Cir. 1997).

IT IS ORDERED THAT:

1. The plaintiff has shown good cause for modification of his prisoner payment order;
2. The initial partial filing fee and subsequent installments shall be collected and remitted, as funds exist, in the manner set forth in 28 U.S.C. § 1915(b)(2). Until the full filing of \$350.00 is paid, the prisoner shall be obligated to pay, and the agency having custody of the prisoner shall forward to the Clerk of the court, 20 percent of the preceding month’s income in such months as the account exceeds \$10.00. *Id.*;
3. The Clerk of the court shall serve a copy of this order on the appropriate financial officer for the plaintiff’s institution; and
4. The plaintiff shall continue to keep the court informed of her current address at all times while this case is pending, as failure to do so could cause the case to be dismissed.

DATED this 4th day of September, 2007.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge